

NTSB Order No.  
EM-124

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 20th day of September, 1985

JAMES S. GRACEY. Commandant, United States Coast Guard,

v.

DONALD J. GURGLIOLO, Appellant.

Docket ME-111

OPINION AND ORDER

By decision dated February 20, 1985 the Commandant affirmed (Appeal No. 2381) and order entered by Administrative Law Judge Michael E. Hanrahan on June 11, 1984 revoking appellant's mariner's license (No. 174320) on finding proved, after an evidentiary hearing, the charge that he had been convicted of a narcotic drug law violation.<sup>1</sup> The charge, to which appellant pleaded guilty, was predicated on evidence establishing that appellant, in September, 1982, had been convicted in the U.S. District Court for the Southern District of Florida of conspiracy to possess with intent to distribute cocaine in violation of 21 U.S.C. §§841(a)(1) and 846.<sup>2</sup> On appeal to the Board, the appellant does not argue that the Commandant erred in affirming the order or revocation. However, he contends in effect that the Commandant abused his discretion by refusing to allow appellant to apply for a new license before the expiration of the three-year waiting period set forth in 46 CFR. 5.13.<sup>3</sup> In light of our agreement with the Coast

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<sup>1</sup>Copies of the decision of the Commandant and the law judge are attached.

<sup>2</sup>Appellant was sentenced on a plea of guilty to 42 months' imprisonment for the federal conviction.

<sup>3</sup>46 CFR 5.13-1(a) provides as follows:

§5.13-1 Time limitations.

(a) Any person whose license, certificate or document has been revoked or surrendered for one or more of the offenses

Guard's contention that the Board lacks jurisdiction over the Commandant's refusal to grant a waiver determination, we will deny the appeal.<sup>4</sup>

The Board has not been conferred general supervisory oversight with respect to Coast Guard licensing of merchant mariners. The authority the Board does have in this area is limited by statute to the review of certain decisions of the Commandant arising in the context of a remedial proceeding over which an administrative law judge has presided.<sup>5</sup> A decision by the Commandant denying a request for a waiver of or for an exemption from a regulatory requirement, such as the three-year waiting period, does not arise from such an adjudicatory proceeding. It is not, therefore, a decision subject to Board review.<sup>6</sup>

ACCORDINGLY, IT IS ORDERED THAT:

1. Appellant's appeal is denied, and
2. The Commandant's order affirming the revocation of appellant's seaman's license by the law judge under authority of 46 U.S.C. 7704 is affirmed.

BURNETT, Chairman, GOLDMAN, Vice Chairman and BURSLEY, Member of the Board, concurred in the above opinion and order.

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described in §§5.03-3, 5.035, and 5.03-10, or for mental or physical incompetence resulting from use of addiction to, narcotics may after three years apply by letter and the application form requesting the issuance of a new license, certificate or document."

<sup>4</sup>The Coast Guard has filed a reply brief opposing the appeal.

<sup>5</sup>49 U.S.C. §1903(a)(9)(B) authorizes the Board to review on appeal "decisions of the Commandant ... on appeals from the orders of any administrative law judge revoking, suspending, or denying a license, certificate, document or register" in proceedings convened pursuant to various former provisions of Title 46, United States Code, currently codified in Chapter 77, 46 U.S.C. §§7701-7705.

<sup>6</sup>The Commandant's decision on the waiver request presumably is reviewable in the courts pursuant to 5 U.S.C. §704.